

# **Control and Profit Transfer Agreement**

between

**Qimonda AG**

and

**Qimonda Dresden Verwaltungsgesellschaft mbH**

## **§ 1**

### **Control**

Qimonda Dresden Verwaltungsgesellschaft mbH subordinates the management of its company to Qimonda AG. Qimonda AG is thus entitled to issue instructions to the management of Qimonda Dresden Verwaltungsgesellschaft mbH with respect to the management of the company. Notwithstanding the above-mentioned right to issue instructions, the management of Qimonda Dresden Verwaltungsgesellschaft mbH continues to be responsible for the management and the representation of Qimonda Dresden Verwaltungsgesellschaft mbH.

## **§ 2**

### **Profit transfer**

- (1) Qimonda Dresden Verwaltungsgesellschaft mbH agrees to transfer its entire profits to Qimonda AG.
- (2) In accordance with § 301 AktG what is to be transferred is the annual net profit before the profit transfer minus any deficit from the previous year. Any other revenue reserves formed during the term of this agreement are to be released by Qimonda Dresden Verwaltungsgesellschaft mbH upon request of Qimonda AG and trans-

Translation only

ferred as profit. The transfer of any amounts resulting from the dissolution of free reserves formed prior to the commencement of the agreement is excluded.

- (3) To the extent permitted under commercial law and economically justified based on proper commercial assessment, Qimonda Dresden Verwaltungsgesellschaft mbH may, with the approval of Qimonda AG, transfer amounts from the annual net profit to the revenue reserves (§ 272 para. 3 HGB, German Commercial Code).
- (4) The entitlement to the profit transfer accrues at the end of the respective financial year of Qimonda Dresden Verwaltungsgesellschaft mbH. It is due at this time which is also the value date.

### **§ 3**

#### **Assumption of loss**

Qimonda AG is obliged to assume any loss of Qimonda Dresden Verwaltungsgesellschaft mbH in accordance with the provisions of § 302 paras. 1, 3 and 4 AktG (German Stock Corporation Act) in their then-current applicable versions which apply *mutatis mutandis*, i.e. under the conditions and to the extent regulated therein for profit transfer agreements with stock corporations.

### **§ 4**

#### **Coming into effect and contractual term**

The agreement shall come into effect upon the approval resolutions of the shareholders' meeting of Qimonda Dresden Verwaltungsgesellschaft mbH and the general meeting of shareholders of Qimonda AG and its entry in the commercial register of Qimonda Dresden Verwaltungsgesellschaft mbH and shall apply in respect of § 1 as of the entry of this agreement in the commercial register of Qimonda Dresden Verwaltungsgesellschaft mbH, otherwise as of 1 October 2007. It shall be concluded for a fixed period until the expiration of 30 September 2012 and shall be extended unchanged each time by one further year unless it is terminated at least three months before its expiry by one of the contracting partners. Contrary to the above, the agreement can be terminated without notice for an important reason only. An important reason shall be deemed to exist, in particular, if Qimonda AG sells its participation in Qimonda Dresden Verwaltungsgesellschaft

schaft mbH, if it no longer directly holds the majority of the voting rights in Qimonda Dresden Verwaltungsgesellschaft mbH or if another shareholder takes an interest in Qimonda Dresden Verwaltungsgesellschaft mbH.

**§ 5**  
**Severability**

Should one or more of the provisions of this agreement prove to be ineffective, the remaining provisions shall remain unaffected. The ineffective provision shall be replaced by an effective provision that corresponds to the economic purpose of the agreement.

[Dresden], this [22 November] 2007

[Munich, this 6 December 2007]

[signatures]

[signatures]

Qimonda AG

Qimonda Dresden  
Verwaltungsgesellschaft mbH